BUSINESS LITIGATION

Sometimes You Can Fight City Hall

By Cory D. Olson

South Minneapolis has a problem. It's an enviable one, as far as problems go. But it's a problem nonetheless. On account of good schools, popular attractions, and vicinity to downtown and the chain of lakes, South Minneapolis draws homebuyers, new businesses and visitors from across the metro. South Minneapolis has another problem. Its streets and homes were planned and built around the turn of the 20th century, long before the modern car culture and five-bedroom, four-bathroom homes. The confluence of these factors has led to disputes over street parking and building permits in several South Minneapolis neighborhoods.

In fairness, such clashes aren't unique to Minneapolis. While South Minneapolis' problems recently generated newspaper headlines, land-use conflicts can arise anywhere. Maybe it's a new business trying to change a zoning classification. Maybe it's a developer seeking approval for a new subdivision. Or maybe it's a longstanding business that finds itself an unwelcome resident in a changing neighborhood. Whatever the situation, there is often spirited debate over the balance of property rights and community desires. Landowners may feel subject to bureaucratic whim, particularly when local politics has turned against them. But, as the saying goes, you can't fight City Hall.

Except that sometimes you can. City Hall is not the all-powerful entity landowners often believe it to be. Granted, Minnesota Statute § 462.357 does give municipalities broad authority to regulate land use. But there are constitutional and statutory limitations on that authority, say nothing of limitations that a municipality may have put on itself. Under Minn. Stat. § 462.361, any person aggrieved by an ordinance, rule, regulation, decision or order may seek judicial review of the zoning decision through an action for declaratory judgment. If the aggrieved party can demonstrate that the municipality exceeded its limitations, the court may grant an appropriate remedy, including injunctive relief.

Successfully challenging a zoning board's act requires careful study of the challenged decision. Consider the Minnesota Supreme Court's recent decision in *White v. City of Elk River*, 840 N.W.2d 43 (Minn. 2013). *White* involved Elk River's attempt to shut down a campground by revoking the campground's conditional-use permit. The case turned on whether the campground had waived its statutory right to continue a non-conforming use in 1984, when it voluntarily complied with a later-enacted zoning law by applying for the conditional-use permit at issue. The court held that it did not, saving the campground. Had the landowner merely accepted Elk River's decision, it may well have been forced to sell or repurpose the land.

White demonstrates why aggrieved landowners should consider all possible means of challenging a zoning decision. This can be difficult if a landowner does not have an obvious statutory or constitutional right at issue and must instead challenge the rationale for the zoning decision. In those circumstances, the landowner must demonstrate that the zoning authority acted in an arbitrary or capricious manner. This can be a difficult, but by no means impossible, task. A methodical review of the maps, plans, surveys, studies and reports cited in the decision may uncover instances where the municipality cut corners or made conclusory, ill-supported conclusions.

Take, for instance, *CR Investments, Inc. v. City of Shoreview,* 304 N.W.2d 320 (Minn. 1981). In that case, a developer successfully challenged Shoreview's denial of a conditional-use permit by demonstrating that the proffered reasons for denial either lacked a factual basis or were legally insufficient. More recently, our firm helped a South Minneapolis restaurant owner challenge Minneapolis's establishment of a critical parking area near his restaurant. Although the case settled before a final decision, the district court had temporarily enjoined the parking restrictions based in part on evidence suggesting the city had failed to make a necessary finding regarding existing on-street parking. In both *CR Investments* and the case of the restaurant owner, the municipality's error was not immediately apparent. The error appeared only after a careful review of the factual underpinning of the adverse decision.

The Earth isn't getting any larger, and the population isn't getting any smaller. Whenever a resource is scarce, you can be sure that fights over how to allocate the resource will follow. Landowners may, through no fault of their own, find themselves on the wrong side of politics and community sentiment. When this happens, landowners should remember that, despite what people may say, sometimes you can fight City Hall.

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